

² By decision dated July 21, 2020, an OWCP hearing representative set aside the January 2, 2020 decision denying expansion of appellant's claim as further development of the record was required. The Board and OWCP may not exercise simultaneous jurisdiction over the same issues in a case on appeal. 20 C.F.R. § 501.2(c)(3). Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue(s) on appeal until after the Board relinquishes jurisdiction. *Id.* As this appeal, filed on January 27, 2020 was pending when OWCP issued its July 21, 2020 decision, the subsequent decision of OWCP dated July 21, 2020 is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See* 20 C.F.R. § 10.626; *see also* A.C., Docket No. 18-1730 (issued July 23, 2019); M.C., Docket No. 18-1278, n.1 (issued March 7, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include an aggravation of her preexisting left shoulder glenohumeral arthritis; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 6, 2019, as she no longer had residuals or disability causally related to her accepted October 26, 2017 employment injury; and (3) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on/after June 6, 2019.

FACTUAL HISTORY

On November 6, 2017 appellant, then a 55-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2017 she strained her left upper back and shoulder when lifting and loading heavy pallets with packages into her postal vehicle while in the performance of duty. She stopped work on November 6, 2017. OWCP accepted the claim for cervical disc disorder with radiculopathy at the C8 cervicothoracic region and paid appellant wage-loss compensation on the supplemental rolls for total disability beginning December 21, 2017, and for intermittent disability beginning September 1, 2018.

On August 8, 2018 Dr. Bonnie J. Weigert, a Board-certified physiatrist, opined that appellant's employment injury aggravated her preexisting left shoulder arthritis.

In an August 17, 2018 report, the district medical adviser (DMA), Dr. Todd Fellars, a Board-certified orthopedic surgeon, reviewed the medical evidence of record and the statement of accepted facts (SOAF). He concluded that appellant's accepted October 26, 2017 employment injury had not caused an aggravation of her preexisting left shoulder osteoarthritis. Dr. Fellars found that her full range of motion and trapezius pain was inconsistent with an aggravation of underlying osteoarthritis. He concluded that, if appellant did have an aggravation of her underlying osteoarthritis, it occurred at a later date, and, thus, was not causally related to the accepted October 26, 2017 employment injury.

In a September 4, 2018 report, Dr. Weigert noted that appellant was seen for neck, parascapular, and right upper extremity pain with radiculopathy. She detailed physical examination findings including decreased shoulder range of motion and impingement, parascapular tenderness on palpation, and fairly good cervical range of motion. Dr. Weigert

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the January 2, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

indicated that appellant was capable of working six hours every other day, three days a week, with no lifting more than 20 pounds and no reaching above shoulder level.

On September 12, 2018 appellant accepted a modified limited-duty clerk position working six hours per day, three days per week.

On January 23, 2019 OWCP referred appellant, together with the medical record, a list of questions, and the SOAF to Dr. Paul Cederberg, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Weigert and the DMA, as to whether appellant's preexisting left shoulder arthritis had been aggravated by her accepted October 26, 2017 employment injury.

In a March 6, 2019 report, Dr. Cederberg, based on a review of the medical evidence and SOAF, concluded that the accepted cervical disc disorder with radiculopathy should have resolved within six months of October 26, 2017 the date of injury. He noted that appellant's physical examination revealed normal right shoulder range of motion, diminished left shoulder range of motion, good rotator cuff musculature, diffuse shoulder tenderness, and brisk and symmetrical triceps, biceps, and brachioradialis reflexes. Dr. Cederberg opined that the accepted employment injury had not aggravated her preexisting left shoulder glenohumeral arthritis. In support of this conclusion, he noted appellant's left shoulder glenohumeral joint pain developed weeks and possibly months later. Dr. Cederberg reported that she had idiopathic left shoulder osteoarthritis, which he determined had not been aggravated or accelerated by her work activities. He also concluded that there were no residuals of appellant's accepted cervical radiculopathy. Dr. Cederberg explained that she appeared pain free when he saw her with active normal range of motion of the neck. He concluded that the accepted cervical radiculopathy should have resolved within six months of the injury. Lastly, Dr. Cederberg opined that appellant was capable of performing her duties as a clerk, with restrictions required by her preexisting left shoulder condition.

By decision dated March 27, 2019, OWCP denied expansion of the acceptance of appellant's claim to include a consequential aggravation of left shoulder glenohumeral arthritis. It accorded the special weight of the medical evidence to Dr. Cederberg as the impartial medical examiner.

On March 27 and May 1, 2019 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits as it found that she no longer had residuals or continuing disability due to her accepted October 26, 2017 employment injury. It found that the weight of the medical evidence rested with the opinion of Dr. Cederberg.

By decision dated June 6, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the evidence rested with the opinion of Dr. Cederberg, who concluded that she no longer had any residuals or disability due to the accepted employment-related conditions.

On June 12, 2019 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 6, 2019 termination decision.

In a report dated June 16, 2019, Dr. Weigert noted that when appellant was initially seen appellant had pain in the upper back area around the left shoulder blade that radiated down the arm, with numbness, and tingling. At that time, appellant's symptoms were thought to be related to her cervical radiculopathy. Dr. Weigert agreed with Dr. Cederberg that appellant's cervical radiculopathy had resolved. She explained that appellant's myofascial pain still limited her activity. Dr. Weigert noted that appellant's left shoulder was then imaged, which revealed a rotator cuff tear and underlying shoulder arthritis, both of which were related to the accepted employment injury. She concluded that appellant still required work restrictions.

On July 17, 2019 a hearing was held regarding the March 27, 2019 decision which denied expansion of the acceptance of appellant's claim. By decision dated September 27, 2019, OWCP's hearing representative vacated the March 27, 2019 decision which denied expansion of the acceptance of appellant's claim. On remand OWCP was to prepare a new SOAF and obtain a supplemental report from Dr. Cederberg as to whether appellant's left shoulder glenohumeral arthritis was caused, aggravated, accelerated, or precipitated in any way by the accepted employment injury.

In a supplemental report dated December 18, 2019, Dr. Cederberg opined that appellant's glenohumeral arthritis of the left shoulder was typically an idiopathic, primary, genetically determined condition along with loose bodies and the degeneration of the subscapularis tendon with partial tear. He noted that she did not present with left shoulder discomfort for weeks or months after the October 26, 2017 employment injury. Dr. Cederberg opined: "We may conclude that the left shoulder problems were a manifestation of a preexisting degenerative condition and not related to the incident in October 2017."

A hearing was held on October 17, 2019 regarding the June 6, 2019 decision terminating appellant's compensation benefits.

By decision dated January 2, 2020, OWCP's hearing representative affirmed the June 6, 2019 decision terminating appellant's wage-loss compensation and medical benefits as modified. He found that there had been no conflict in the medical opinion evidence on the issue of whether appellant continued to have residuals and continuing disability due to her accepted employment injury at the time of the referral to Dr. Cederberg. Thus, Dr. Cederberg was considered as a second opinion physician rather than impartial medical specialist. OWCP's hearing representative found that Dr. Cederberg's opinion constituted the weight of the medical opinion evidence, finding that appellant's accepted employment injury had resolved with no residuals or disability.

By separate decision also dated January 2, 2020, OWCP denied expansion of the acceptance of the claim to include aggravation of her preexisting glenohumeral arthritis of the left shoulder. It found that the special weight of the medical opinion evidence rested with Dr. Cederberg's opinion as an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 1

If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁹

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ OWCP's implementing regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹¹ Where a case is referred to an impartial medical specialist for the purpose of

⁵ *L.F.*, Docket No. 20-0359 (issued January 27, 2021); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *L.F.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁷ *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See D.T.*, *id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁹ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ 20 C.F.R. § 10.321.

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹²

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP properly determined that a conflict in medical opinion existed between Dr. Weigert, appellant's treating physician, and the DMA regarding the issue of whether appellant's preexisting left shoulder arthritis had been aggravated as a result of her accepted October 26, 2017 employment injury. Accordingly, it referred her to Dr. Cederberg for an impartial medical examination and an opinion to resolve the conflict,¹³ pursuant to 5 U.S.C. § 8123(a).

As discussed, when OWCP has referred the case to an impartial medical specialist to resolve a conflict in medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.¹⁴ The Board finds, however, that Dr. Cederberg's opinion is insufficiently rationalized to be entitled to the special weight accorded an impartial medical specialist.

In his March 6, 2019 report, Dr. Cederberg, based on a review of the medical evidence and SOAF, concluded that the accepted employment injury had not aggravated appellant's preexisting left shoulder glenohumeral arthritis as her left shoulder joint pain developed weeks and possibly months later. Dr. Cederberg reported that she had idiopathic left shoulder osteoarthritis, which he determined had not been aggravated or accelerated by her work activities.

In his December 18, 2019 supplemental report, Dr. Cederberg again opined that appellant's accepted October 26, 2017 employment injury did not aggravate her preexisting left shoulder condition. He found appellant's left shoulder glenohumeral arthritis was idiopathic in nature and had not been caused or aggravated by the accepted October 26, 2017 employment injury. The Board notes that Dr. Cederberg's opinion regarding appellant's left shoulder arthritis was conclusory in nature and was not adequately supported by medical rationale, based upon objective medical evidence. Dr. Cederberg did not explain his opinion that the accepted employment injury had not aggravated appellant's preexisting left shoulder glenohumeral arthritis. He did not explain why an aggravation of an arthritic condition could not present weeks or months following an injury. The Board also notes that Dr. Cederberg also offered no further medical rationale to explain his conclusion that appellant's left shoulder condition was purely idiopathic. For these reasons, the March 6, 2019 report of Dr. Cederberg and his December 18, 2019 supplemental report did not sufficiently address whether the acceptance of appellant's claim should be expanded to include her left shoulder condition.

¹² *A.R.*, Docket No. 18-0441 (issued February 19, 2020); *V.K.*, Docket No. 18-1005 (issued February 1, 2019); *D.M.*, Docket No. 17-1411 (issued June 7, 2018).

¹³ *G.B.*, Docket No. 19-1510 (issued February 12, 2020); *R.H.*, 59 ECAB 382 (2008).

¹⁴ *S.A.*, Docket No. 18-1353 (issued May 22, 2020); *D.O.*, Docket No. 17-0911 (issued February 2, 2018).

Therefore, in order to resolve the conflict in the medical opinion evidence, the case will be remanded to OWCP for referral of the case record, including an updated SOAF, and appellant to a new impartial medical specialist for examination and a rationalized opinion as to whether she sustained an aggravation of her preexisting left shoulder glenohumeral arthritis causally related to the accepted October 26, 2017 employment injury in accordance with 5 U.S.C. § 8123(a).¹⁵ After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹⁶ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁹ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 6, 2019.

Preliminarily, the Board finds that the hearing representative correctly found that there was no conflict under 5 U.S.C. § 8123(a) with respect to the DMA's April 17, 2018 report and the reports from Dr. Weigert, the attending physician, on the issue of whether the accepted condition of cervical disc disorder with radiculopathy at the C8 cervicothoracic region had resolved.²¹ OWCP referred appellant to Dr. Cederberg to resolve the conflict in the medical opinion evidence

¹⁵ S.S., Docket No. 19-1658 (issued November 12, 2020); S.M., Docket No. 19-0397 (issued August 7, 2019).

¹⁶ D.G., Docket No. 19-1259 (issued January 29, 2020); R.P., Docket No. 17-1133 (issued January 18, 2018); S.F., 59 ECAB 642 (2008); Kelly Y. Simpson, 57 ECAB 197 (2005); Paul L. Stewart, 54 ECAB 824 (2003).

¹⁷ D.G., *id.* R.P., *id.*; Jason C. Armstrong, 40 ECAB 907 (1989); Charles E. Minnis, 40 ECAB 708 (1989); Vivien L. Minor, 37 ECAB 541 (1986).

¹⁸ D.G., *id.*; M.C., Docket No. 18-1374 (issued April 23, 2019); Del K. Rykert, 40 ECAB 284, 295-96 (1988).

¹⁹ D.G., *id.*; A.G., Docket No. 19-0220 (issued August 1, 2019); A.P., Docket No. 08-1822 (issued August 5, 2009); T.P., 58 ECAB 524 (2007); Kathryn E. Demarsh, 56 ECAB 677 (2005). Furman G. Peake, 41 ECAB 361 (1990).

²⁰ D.G., *id.*; A.G., *id.*; James F. Weikel, 54 ECAB 660 (2003); Pamela K. Guesford, 53 ECAB 727 (2002); Furman G. Peake, *id.*

²¹ Under 5 U.S.C. § 8123(a), if there is a disagreement between an OWCP physician and an attending physician, a third physician shall be selected to make an examination.

between the DMA and Dr. Weigert only on the issue of whether the accepted October 26, 2017 employment injury caused an aggravation of her left shoulder osteoarthritis. As there was no conflict in medical evidence pursuant to 5 U.S.C. § 8123(a), Dr. Cederberg's opinion regarding the status of appellant's accepted cervical conditions was that of a second opinion physician.²²

In his March 6, 2019 report, Dr. Cederberg indicated that he had reviewed the SOAF and conducted a physical examination. He diagnosed resolved cervical radiculopathy and preexisting left shoulder glenohumeral arthritis. Dr. Cederberg opined that accepted cervical radiculopathy had resolved based on findings upon physical examination including active range of motion of the neck and pain free appearance. In addition, he concluded that the diagnosed cervical radiculopathy should have resolved within six months of the injury.

By decision dated January 2, 2020, OWCP's hearing representative affirmed the June 6, 2019 decision terminating appellant's wage-loss compensation and medical benefits. The hearing representative found that Dr. Cederberg's opinion constituted the weight of the medical opinion evidence.

Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.²³

For the reasons explained above, OWCP failed to fully develop the issue of whether the acceptance of the claim should be expanded to include aggravation of appellant's preexisting left shoulder glenohumeral arthritis.²⁴ As OWCP has not resolved the issue of whether the acceptance of appellant's claim should be expanded to include aggravation of left shoulder glenohumeral arthritis, the Board finds it has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.²⁵

CONCLUSION

The Board finds that this case is not in posture for decision as to expansion of the claim to include aggravation of appellant's preexisting left shoulder glenohumeral arthritis. The Board further finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 6, 2019.²⁶

²² See *R.B.*, Docket No. 20-01009 (issued June 25, 2020); see also *S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that, at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); see also *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the impartial medical examiner was not afforded the special weight of the evidence but was considered for its own intrinsic value as he was a second opinion specialist).

²³ See *B.W.*, Docket No. 20-1033 (issued November 30, 2020); *R.B.* Docket No. 20-0109 (issued June 25, 2020).

²⁴ See *B.W.*, *id.*; *J.T.*, Docket No. 19-1723 (issued August 24, 2020).

²⁵ *T.M.*, Docket No. 19-1068 (issued March 30, 2021); *B.W.*, Docket No. 20-1033 (issued November 30, 2020).

²⁶ In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2020 decision of the Office of Workers' Compensation Programs regarding expansion of the acceptance of her claim is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

IT IS FURTHER ORDERED THAT the January 2, 2020 decision of the Office of Workers' Compensation Programs regarding the termination of appellant's wage-loss compensation and medical benefits is reversed.

Issued: April 5, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board